

FILED

JAN 16 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDUARDO PERALTA,

Defendant - Appellant.

No. 05-10786

D.C. No. CR-03-00523-SOM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Submitted January 8, 2007 **

Before: TASHIMA, W. FLETCHER and BERZON, Circuit Judges.

The court's order of October 17, 2006 is vacated.

A review of the record and the opening brief indicates that the questions

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea. *See United States v. Ortega-Ascanio*, 376 F.3d 879, 883 (9th Cir. 2004) (denial of motion to withdraw a guilty plea is reviewed for abuse of discretion). The changes in sentencing law imposed by *United States v. Booker*, 543 U.S. 220 (2005), did not constitute "a fair and just reason" for requesting the withdrawal.

Accordingly, we summarily affirm the district court's judgment.

All pending motions are denied as moot.

AFFIRMED.

